

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOUGLAS McCALLUM,

Plaintiff,

-against-

NYC CITY OF NY,

Defendant.

21-CV-9162 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action under 42 U.S.C. § 1983, alleging that Defendants falsely arrested him and used excessive force on him. The Court dismisses the complaint for the following reasons.

By order dated November 16, 2021, the Court granted Plaintiff leave to amend his complaint to allege additional facts to state a claim for relief. (ECF 4.) On January 4, 2022, Plaintiff filed a substantially similar complaint with more information against the “NYCPD,” which the Court understands to be the New York City Police Department (NYPD).<sup>1</sup> That complaint was opened as a new civil action and the case is currently pending before the Hon. Paul A. Engelmayer under docket number No. 22-CV-0081 (PAE). As this action raises the same claims, no useful purpose would be served by litigating this duplicate lawsuit. Therefore, this complaint is dismissed without prejudice to Plaintiff’s pending case under docket number 22-CV-0081 (PAE).

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<sup>1</sup> Although Plaintiff names the NYPD as the defendant in No. 22-CV-0081 (PAE), his claims are ultimately against the City of New York because an agency of the City is not an entity that can be sued. See N.Y. City Charter ch. 17, § 396 (“[A]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law.”).

## CONCLUSION

Plaintiff's complaint is dismissed as duplicative of Plaintiff's case pending under docket number 22-CV-0081 (PAE).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

SO ORDERED.

Dated: February 11, 2022  
New York, New York

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
Chief United States District Judge